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OFFICE OF PETITIONS

In re Patent of Pande : DECISION ON REQUEST
Patent No. 7,668,983 : FOR RECONSIDERATION OF
Issue Date: February 23, 2010 : PATENT TERM ADJUSTMENT
Application No. 10/692,957 : and
Filed: October 24, 2003 : NOTICE OF INTENT TO ISSUE
Docket No. 14920US01 : CERTIFICATE OF CORRECTION

This is a decision on the petition filed on June 10, 2010, which is being treated as a petition requesting that the patent term adjustment indicated on the above-identified patent be corrected to indicate that the term of the above-identified patent is extended or adjusted by three hundred thirty-seven (337) days.

The petition to correct the patent term adjustment indicated on the above-identified patent to indicate that the term of the above-identified patent is extended or adjusted by three hundred thirty-seven (337) days is **granted to the extent indicated herein.**

Patentee argues the Office miscalculated the period of "B delay" pursuant to 37 CFR 1.702(b).

The Office does not concur with patentee's assertion that the period of B delay is 43 days. The period of B delay in this case is 61 days. Unless a Request for Continued Examination ("RCE") is filed, the period of B Delay ends of the date the patent issues. In this case, a RCE was filed September 23, 2009. Per 35 U.S.C. § 154(b)(1)(B)(i), B Delay does not include "any time consumed by continued examination of the application requested by the applicant under section 132(b)." The maximum period of B Delay in this case is 1064 days, which is the number of days beginning on October 25, 2006, the day after the date three years after the application's filing date, and ending on September 22, 2009, the day before the date the RCE was filed.

In addition, patentee's determination fails to exclude the correct number of days consumed by appellate review. As stated

in 35 U.S.C. 154(b)(1)(B)(ii), B delay does not include "any time consumed by appellate review by the Board of Patent Appeals and Interferences." In this instance the appellate period begins on October 5, 2006, when the Notice of Appeal was filed, and ends on July 23, 2009, the date the Board mailed a decision. Thus, only a portion of the appellate period occurred during the B delay period. The period of B delay does not include the 1003 day period beginning on October 25, 2006, the first day overlapping with the period of B delay that occurred after the date the Notice of Appeal was filed, and ending on July 23, 2009, the date the Board mailed a decision. Excluding the 1003 days consumed by appellate review results in a period of B delay of 61 days (1064 - 1003).

In light thereof, the patent term adjustment is 355 days, which is the sum of 355 days of delay under 35 U.S.C. 154(b)(1)(A) and 61 days of B Delay, reduced by 61 days of Applicant delay.

The Office will *sua sponte* issue a certificate of correction. Pursuant to 37 CFR 1.322, the Office will not issue a certificate of correction without first providing assignee or patentee an opportunity to be heard. Accordingly, patentee is given **one (1) month or thirty (30) days**, whichever is longer, from the mail date of this decision to respond. No extensions of time will be granted under § 1.136.

Nothing in this decision shall be construed as a waiver of the requirement of 35 U.S.C. 154(b)(4) that any civil action by an applicant dissatisfied with a determination made by the Director under 35 U.S.C. 154(b)(3) be filed in the United States District Court for the District of Columbia within 180 days after the grant of the patent.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application is being forwarded to the Certificates of Branch for issuance of a certificate of correction. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted **by three hundred fifty-five (355) days**.

Telephone inquiries specific to this matter should be directed to the undersigned at (571) 272-3230.

Shirene Willis Brantley

Shirene Willis Brantley
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 7,668,983 B2

DATED : February 23, 2010

DRAFT

INVENTOR(S) : Pande

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 1004 days

Delete the phrase "by 1004 days" and insert – by 355 days--